IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Crl.MC.No. 3741 of 2007()

CP.78/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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PETITIONER: ACCUSED

MALATHI,
D/O.VAVA, AGED 45 YEARS,
PUTHUVAL NIKARTHIL,
CHERTHALA SOUTH PANCHAYATH,
CHERTHALA.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.B.PRAMOD
SRI.GEORGE MATHEWS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR ,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3741 of 2007

Dated this the 14th day of December, 2007

ORDER

Petitioner, a woman, faces indictment in a prosecution under the provisions of the Kerala Abkari Act. She was not arrested on the date of detection for the reason that the detecting party did not consist of any woman official, it is submitted. Thereafter, the petitioner has not been arrested ever. She therefore had no occasion to appear before the Investigating Officer or the learned Magistrate and seek regular bail. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered. The petitioner has received summons from the learned Magistrate. The petitioner is willing to appear before the learned Magistrate and seek regular bail, but she entertains an apprehension that her application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. She apprehends that she may be remanded to custody.

2. I must certainly assume that the learned Magistrate, when he issues summons to the petitioner and not a warrant under Section 204 Cr.P.C, must have applied his mind and must have come to the conclusion that it is not necessary to arrest or detain the petitioner. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

3. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits

and expeditiously - on the date of surrender itself. The learned Magistrate must consider the petitioner's application for bail in the light of the dictum in **Sukumari v. State of Kerala** [2001(1) K.L.T 22] and also in the light of the fact that only a summons not warrant has been issued at the first instance to the petitioner.

4. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-